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David J. Heller
c/o Ridout & Maybee
One Queen Street East, Suite 2400
Toronto Ontario CANADA
M5C 3B1

In re Application of	:	
Howard Kaplan (deceased)	:	DECISION ON
Application No.: 10/070,503	:	
PCT No.: PCT/CA00/01027	:	PETITION
Int. Filing Date: 07 September 2000	:	
Priority Date: 07 September 1999	:	UNDER 37 CFR 1.42
Attorney Docket no.: 33956-0049	:	
For: ENHANCED PHAGE DISPLAY	:	
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AND METHODS FOR PRODUCING	:	

This is a decision on a submission under 37 CFR 1.42, filed in the United States Patent and Trademark Office (USPTO) in response to a Notification of Missing Requirements on 12 August 2002.

BACKGROUND

On 07 March 2002, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee. In response to the Notification of Missing Requirements mailed on 12 June 2002, and to satisfy the requirement that an oath or declaration of the inventors be furnished, applicant filed a declaration on 12 August 2002 that was signed by inventors Joycelyn Entwistle, Jamshid Tanha, Saran Narang, Michael Dan and identifying Carole Grad as legal representative for deceased inventor Howard Kaplan. The submission was treated as a request for status under 37 CFR 1.42.

DISCUSSION

Pursuant to 37 CFR § 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal representative. The declaration must also state the citizenship, residency and last mailing address of the deceased inventor to comply with 37 CFR 1.497(a)(3).

The declaration submitted on 08 January 2002 is executed by inventors Joycelyn Entwistle, Jamshid Tanha, Saran Narang, Michael Dan as identified in the published international application and indicates their respective citizenship, residency and mailing addresses. With respect to the deceased inventor, however, the declaration only identifies Carole Grad as legal representative for the deceased inventor Howard Kaplan but the declaration is not executed by Ms. Grad. Furthermore, the declaration also does not identify the country of citizenship, residency and mailing address for both the legal representative and the deceased inventor.

Thus, the declaration is unacceptable because it is not signed by Carole Grad as legal representative for deceased inventor Howard Kaplan and does not clearly state the country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 CFR 1.497. See also 37 CFR 1.64. Accordingly, it is inappropriate, at this time, to accord the application status under 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is presently DISMISSED WITHOUT PREJUDICE.

If reconsideration of the merits of the request for status under 37 CFR 1.42 is desired, applicant is required to correct the above-noted defects including the furnishing of an oath/declaration in compliance with 37 CFR 1.42 and 1.497 within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Request Under 37 CFR 1.42" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


Cynthia M. Kratz

Attorney Advisor
PCT Legal Office

CMK:cmk

Telephone: (703) 306-5467